IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 230.

CAIRO, TRUMAN & SOUTHERN RAILROAD COMPANY

vs.

THE UNITED STATES OF AMERICA AND JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF APPELLANT.

S. S. ASHBAUGH,
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G. B. WEBSTER,
Of Counsel.

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Statement of the Case.

This is an appeal from the Court of Claims sustaining a demurrer to the petition for the adjustment of losses sustained by the appellant during that portion of the period of Federal Control for the first six months of the year 1918,

when the appellant was under the control of the Director General of Railroads of the United States. An application had been made to the Interstate Commerce Commission for the settlement of the claim for the losses sustained by the appellant in the sum of $29,575.94, being the items set out in the complaint in Section 5 of the petition found on pages 4 and 5 of the Record.

Upon the petitions filed in the Court of Claims two hearings were had. At the first hearing the Court sustained a demurrer to the petition on the ground of lack of jurisdiction appearing in the allegations of the petition. No opinion was filed, but the Court entered the following memorandum:

> "The Court's conclusion is based upon the considerations:
>
> "(1) That the jurisdiction of the Court of Claims in cases such as this is conferred by section 3 of the Federal Control Act, 40 Stat. 451. It provides for action by a board of referees and authorizes an agreement by the President with the carrier, and 'failing such agreement' suit may be brought to determine the amount of just compensation. In the suit thus authorized the report of the referees is *prima facie* evidence of the amount of compensation and of the facts stated therein. The facts averred in the petition fail to show that the condition precedent contemplated by the statute has been complied with so as to bring the case within the jurisdiction of this Court.
>
> "(2) That if the Court have jurisdiction, the agreement, Exhibit A to the petition, concludes any rights the plaintiff might otherwise have."

In accordance with the rules of the Court an amended petition was filed complying as far as possible with the sug-

gestions of the Court in the memorandum. To this amended petition the defendants refiled their former demurrer. It appeared at the second hearing that the Court had sustained the first ground of demurrer at the former hearing because it was assumed by the Court that the order of the Board of Referees should have been referred to the Interstate Commerce Commission, and the appeal should be taken from the order of the Commission. When this, however, was corrected by introducing the statute showing that the appeal should be taken from the order of the Board of Referees, the Court directed the argument to proceed as to the meaning of the contract set out as an exhibit to the plaintiff's petitions. Upon the final argument at the second hearing the Court sustained the defendants' demurrer as shown by the order and judgment of the Court set out on page 7 of the Record. From this judgment sustaining the demurrer and dismissing the petition, the plaintiff duly appealed, which appeal was by the Court allowed, as shown on page 8 of the Record.

The case was filed in this Court on December 3, 1923, and is here for consideration.

Assignment of Error.

The Court below erred in sustaining the defendants' demurrer to the plaintiff's amended petition, and in dismissing said petition from the Court.

The Issue Involved.

Under the ruling of the Court below no issue as to the four items of losses sustained by the plaintiff as alleged in Section 5 of the petition set out on pages 4 and 5 of the Record.

is now before the Court, but the sole issue is as to the meaning of the contract set out as Exhibit "A" to the petitions and found beginning on page 5 of the Record.

Is this contract a receipt in full for all losses and damages sustained by the plaintiff as alleged in Section 5 of its petition? The said contract is a contract executed by the appellant in this action beginning on page 5 and ending on page 6 of the Record.

It is the contention of the appellant that this contract must be considered as a whole, must be all construed together, and that it in no wise referred to or included any item of loss or damage sustained by the plaintiff below and set out in Section 5 of the petition, but that the provisions of said contract were prospective and applied solely from and after the date of relinquishment. This is the exact allegation made in the petition in reference to the contract, and which allegations on demurrer are assumed to be true, and should have been taken into consideration by the Court below, and a trial held upon the validity of such losses and damages.

On the contrary it is held by the defendants that the contract is a receipt in full for all losses and damages sustained during the period of Federal control by the railroad company, and that such waiver prevents the appellant from the recovery of its losses and damages so set out in its petition.

The sole question, then, before this Court is the meaning and effect of this contract which the Court held to be an acknowledgment of payment in full, or a waiver of the losses and damages set out in Section 5 of the petition.

ARGUMENT.

I.

Jurisdiction of the Court Below.

It was alleged in the demurrer to the petition and to the amended petition that the Court below had no jurisdiction under the allegations contained in the petition. Anticipating that this claim may also be urged in this Court, some attention must be given to it, although the Court below at the second hearing overruled the first ground of demurrer, took jurisdiction of the case, and decided the demurrer on the ground that the petition did not allege facts sufficient to constitute a cause of action.

The jurisdiction of the Court below in this class of cases was conferred by the Federal Control Act of March 21, 1918, 40 Stat. 461, Paragraph 3115¾*a*, Compiled Statutes, 1918. Section 3 of this Act provides that claims against the Government growing out of the taking of the railroads for war purposes under the Act of August 29, 1916, 39 Stat. 645, might be settled by agreement between the President and the railroa ' company and payment might be made for such claims. This section further provides that if the President or the Director General, to whom the power to make such agreement had been given, shall fail to agree with the railroad company upon the validity or the amount of such claims, a Board of Referees shall be appointed by the Interstate Commerce Commission, which Board should hear the claims and report its findings to the parties.

The statute then specifically provides as follows:

> "Failing such agreement, either the United States or such carrier may file a petition in the Court of Claims for the purpose of determining the amount of such just compensation, and in the proceedings in said court the report of said referees shall be *prima facie* evidence of the amount of just compensation and of the facts therein stated. Proceedings in the Court of Claims under this section shall be given precedence and expedited in every practicable way."

The petition properly alleged the nature of the claims; that the Director General failed to agree with the plaintiff as to the amount due; that the Interstate Commerce Commission had appointed a Board of Referees before whom the claim was presented; that the Board of Referees filed a report thereon dated June 14, 1922, and that by virtue of this finding the plaintiff filed its petition in the Court of Claims. No objection was made in the demurrer that all material allegations were not included in the petition, but it was alleged by the defendants that under the statute above quoted the Court had no jurisdiction of the subject matter of the claim because the Board of Referees failed to find any amount due the plaintiff.

It appeared from the argument of counsel for the defendants in support of this ground of the demurrer that if the Board of Referees had found any amount whatever due the plaintiff, then either party, or in fact both parties, might appeal to the Court of Claims for a hearing upon the report filed with the parties and upon the original claim filed before the Director General.

The Court below, however, it was learned at the second hearing, took the view that the report of the Board of Referees

should have been filed with the Interstate Commerce Commission, and the appeal taken from the refusal of the Commission to allow the claim. This, however, was not the statute, and it appeared at the second hearing that the first ground of the demurrer was not well taken. It was then assumed by the Court that whatever the finding of the Board of Referees might be, either party dissatisfied with such report might file their petition in the Court of Claims and demand a hearing thereon. The Court below did not take the view expressed by counsel for the defendants that if the Board of Referees found nothing due, that no appeal would lie to the Court of Claims. The Court did not take the view that if the Referees found a million dollars due the plaintiff, the Director General might appeal, but if the Board of Referees found that nothing was due then no appeal would lie under the same statute.

All of this, however, was corrected by the Court in taking jurisdiction of the case and sustaining the demurrer at the second hearing referred to. The statute is so plain that no further discussion need be entered into as to the jurisdiction of the Court below.

II.

Admissions on Demurrer.

It will be noticed by the Court that the claim under consideration was not within or growing out of the contract which was set out as an exhibit to the petition in the Court below. The claim is specifically set out in Section 5 of the petition beginning at the bottom of page 4 of the Record, and includes four items of loss and damage which it was alleged by the appellant should be settled by the Director General and about which no agreement was reached.

On page 4 of the Record it is alleged that the plaintiff sustained a loss during the period of Federal Control because of deficit in operating expenses in the sum of $6,908.40.

It is further alleged that there was a loss during the period of Federal Control because it was not provided with adequate repairs and renewals of road and stock and equipment in the sum of $3,350.40.

It is further alleged that there was a further loss during said period because it was not provided with proper maintenance of the ways and structures in the sum of $5,360.00.

It is alleged that there was a further loss by not furnishing the necessary materials used in the operation of the railroad during said period in the sum of $13,957.14.

The nature of the contract set out as an exhibit to the petition is described in Sections 1, 2, 3, and 4 of the petition beginning on page 2 of the Record, and after such description it is said in Section 4 of the petition, repeated on pages 3 and 4 of the Record,

> "That said contract was entirely unilateral, and was without any consideration whatever, granted by the Director General to and for the use of the plaintiff, and that all the pretended rights, privileges, and conveniences supposed to be granted by the Director General to the plaintiff, were then the rights, privileges, and conveniences of the plaintiff granted to it by law. That the plaintiff gained nothing by the execution and acceptance of this contract, and by it lost no rights whatsoever.
>
> "That said contract was in nowise and to no extent a waiver of its rights to recover from the United States and the Director General its expenses of op-

eration, its loss in depreciation, and its just compensation above mentioned, and in the signing of said contract by the officers of the plaintiff, no intent was recorded that they accept the terms of the contract as a waiver of said right in any way or to any extent whatsoever.

"It is apparent from the contract that its provisions were prospective and applied solely from and after the date of relinquishment and were not to apply in anywise to the period of control from January 1 to July 1, 1918."

It is thus shown that this action did not arise out of the contract or because of anything contained in it, but the contract was set out as an exhibit to the petition not as a part thereof, but merely for the purpose of showing to the Court that the cause of action set out in the petition, and the items of losses and damages set out in Section 5 thereof, were entirely independent of and arose outside of the contract itself, and to show to the Court that no provision contained in the contract referred to any of these losses or damages, and that the contract did not and could not apply to these losses and damages, and that the demurrer admitted that there was no consideration covering these losses and damages included in or even remotely referred to by the said contract.

Upon the demurrer the Court overlooked the fact that the claim was founded upon losses and damages not included in the contract, and overlooked the fact that this allegation of the petition expressly averred "That said contract was in nowise and to no extent a waiver of its rights to recover from the United States and the Director General its expenses of operation, its loss in depreciation, and its just compensation

above mentioned, and in the signing of said contract by the officers of the plaintiff, no intent was recorded that they accepted the terms of the contract as a waiver of said right in any way or to any extent whatsoever. It is apparent from the contract that its provisions were prospective and applied solely from and after the date of relinquishment and were not to apply in anywise to the period of control from January 1 to July 1, 1918." The demurrer admitted this fact, and the Court erred in applying to such a claim so specifically plead an allegation in an outside document which was made an exhibit to the petition for the sole purpose of showing that the claims sued on were not included within the contract. The Court below should have heard the testimony upon the claim sued on, and then if the defendants had been able to prove that the items in the claim had been at some time, and somehow, and for some amount, settled and paid for, then the Court might on final hearing have rendered judgment in favor of the defendants. But on the petition containing the allegations above set out the Court erred in applying a contract covering other things and other items and which contract it is admitted by the demurrer did not include the items in suit and which were not referred to in any provision in the contract.

III.

The Nature of the Contract.

The contract which the Court below construed to be a settlement of the claims set out in the petition is on pages 5 and 6 of the Record.

Whatever may have been the view of the Director General, the decision of this Court in the case of the *Northern Pacific Railway Company et al. vs. North Dakota,* 250 U. S. 135, forever settled the question that these roads were taken under Federal Control and were subject to the constitution and the laws made and in force under such conditions. The plaintiff is entitled to recover from the defendants, the United States and the Director General, for losses and damages during the period of Federal Control, January 1 to July 1, 1918, the date of relinquishment, unless barred from such recovery by the so-called contract referred to above.

According to the tenor of said contract the plaintiff in consideration of obtaining the two days free time or reclaim allowance and such other co-operation as may be accorded to it by the Director General, executed the pretended waiver and contract which the defendants claim bars the right of recovery in this case.

This contract is entirely unilateral and without any consideration or benefit to the plaintiff whatsoever; all the pretended rights, privileges and conveniences supposed to be granted by the Director General to the plaintiff were then the rights, privileges and conveniences of the plaintiff granted to it by law, and the relation attempted to be created by said contract was a relation already created by law. There is no intent recorded in the said instrument that the officers of the plaintiff in signing the same accepted the terms as a waiver of the right to recover for the items of loss and damage set out in Section 5 of the petition in any way or to any extent. The items sued on in this action are in no wise connected with the subject matter of the contract set out as Exhibit A. They are not included within the terms or even within the purview of this contract.

IV.

The Date of the Contract.

The notice of relinquishment from Federal Control was received and acted upon by the plaintiff July 1, 1918. Thereafter from and including the said 1st day of July, 1918, the officers of said plaintiff operated the railroad of the plaintiff separate and independent of the provisions of the Federal Control Act, and the further provisions of Section 204 of the Transportation Act approved February 28, 1920. The contract set out in the petition as Exhibit A was executed by the plaintiff September 10, 1919, and no reference is contained therein to the claims of the plaintiff for losses and damage arising during the six months period of Federal Control; no intent was recorded that in signing the said contract the officers of the plaintiff accepted its terms as a waiver of the right of recovery on such claims in any way or to any extent. The claims referred to and included within the proposed terms and purview of the said contract cannot be construed to be those claims arising or that might have arisen under the provisions of the Control Act and of the Transportation Act, under which the plaintiff was operated prior to the date of relinquishment, July 1, 1918. Furthermore, the contract and the provisions therein cannot be made retroactive unless specifically provided for in that instrument. It is apparent that the provisions of the contract executed September 10, 1919, were prospective and applied solely from and after the date of execution and were not to apply in anywise to the period of control from January 1 to July 1, 1918.

Under the most drastic construction of the contract made by the Director General the plaintiff is entitled to judgment on the several items set out in the petition for the period from January 1 to July 1, 1918.

V.

The Real Purposes of the Contract.

It is to be remembered that the railroads of the United States, including the plaintiff below, were taken under Federal Control finally on January 1, 1918, for the purpose of aiding in the prosecution of the war then being waged. Of course, as they were taken for public use, the Fifth Amendment to the Constitution and all the laws then on the statute book and those which were subsequently passed in aid of this purpose, should all be applied. It is admitted in the pleadings that this railroad was taken under Federal Control and that a notice of relinquishment from such control was issued by the Director General on June 25, 1918. This notice of relinquishment in itself may have been entirely void because it was in violation of Section 1 of the Federal Control Act. But these matters may be entirely disregarded because the railroad company did upon receipt of the notice of relinquishment resume control and operation of its own railroad, and the further provisions of the Transportation Act of March 21, 1920, were applied so far as the same were applicable.

The Director General in his report to the 67th Congress, 4th Session, in House Document No. 546, on page 5, in regard to short line railroads, says:

> "There are some 855 short-line railroads in the United States. The Railroad Administration did not take over the actual operation of these properties, and prior to June 30, 1918, they were formally relinquished from any question of constructive Federal control."

The question of actual control of these 855 short line railroads is no longer a matter of doubt, as the question has been settled by numerous decisions of the Interstate Commerce Commission and by a long line of settlements made to the different railroads in accordance with those decisions. The sole question, therefore, now to be considered is as to the liability of the Director General for the losses and damages and compensation set out in the petition of the plaintiff as affected by the contract, if the contract or any of its provisions can be applied to the claim set out in the petition.

In order to determine this question the contract itself must be taken into consideration. The vagueness, generality and ineffectiveness of the contract itself indicate very plainly the doubt and uncertainty of the Director General, when he drafted the contract as alleged in the petition and admitted by the demurrer. The only apparent purpose in drafting the contract is that of assuring the railroads of the two days free time for loading and unloading, which provision did not give the railroad anything that it did not then possess.

The contract apparently attempts to provide that for such assurance or privilege the plaintiff could not recover any losses or claims arising in law or equity against the Director General under the Federal Control Act.

The very statement of those provisions shows that no general language in the contract can be construed as a receipt in

full or as a general waiver because the contract shows on its face not only that it was executed some 15 months after the plaintiff was relinquished from Federal control, but there is no language therein which would permit of its having a retroactive effect, the application of the language used therein being wholly prospective; and it is specifically provided that it was "not intended to affect any claim said company may have against the United States for carrying the mails or for other services rendered not pertaining to or based upon the Federal Control Act."

The contract then begins only on September 10, 1919, and was not intended by its very terms and conditions to apply to the period between January 1 and July 1, 1918, and indeed could not have applied to that period.

The whole amount of "full adjustment, settlement, satisfaction, and discharge of any and all claims and rights at law or in equity" mentioned in the contract, must be the exact claims and rights mentioned in the other provisions of the contract and to these only, and as the limitations of the contract as above set out are specifically mentioned, this language of the contract cannot be applied to the items of loss and damage and compensation sued on in the plaintiff's petition.

VI.

Trunk Line Contracts.

This view of the contract set out as an exhibit to the petition below is fully sustained by a consideration of the trunk line contracts made under the same law by the Director General at the same time and for the same purposes, which

trunk line contract is set out fully beginning at page 39 of the Public Acts and Proclamations of the President relating to the United States Railroad Administration under date of December 31, 1918, where Section 5 is inserted providing for "upkeep" and where Section 7 is inserted providing for "compensation." Here it is specifically provided that for the trunk lines these items were within the contracts and due terms of settlement were used. This is fully shown in Section 3 of the trunk line contracts, which particularly corresponds to the third paragraph of the short line contracts, but it is significant that while the short line contract contains no reference to compensation or claims for losses and damages, as set out in the petition, yet under Section 3 of the trunk line contract in order to provide for the settlement of "upkeep" and "compensation," one significant clause is inserted in the terms of the acceptance, which clause reads as follows:

> "* * * for compensation under the Constitution and laws of the United States for the taking possession of its property, and for the use, control, and operation thereof during Federal control, and for any and all loss and damage to its business or traffic by reason of the diversion thereof or otherwise which has been or may be caused by said taking or by said possession, use, control, and operation."

Here in the trunk line contract the Director General and trunk line railroads considered "upkeep" and "compensation," and in the receipt provided it is shown that when fully settled the receipt should include these items.

If the Director General under the trunk line contracts was to provide for the payment of "upkeep" and "com-

pensation," and agreed to do so, then on what ground the defendants can now say that the short line railroads and especially the appellant, could be taken for public use and no losses or damages or compensation be paid for such use, and how can the demurrer be sustained as to the petition of the plaintiff?

The Constitution does not say that if the trunk lines shall be taken for the public use just compensation should be made, but that if short line railroads are taken for the same use, no compensation need be made. No such distinction has been made by Congress and no such distinction has been authorized by law.

VII.

The Consideration in the Contract.

The contract set out as Exhibit A on pages 5 and 6 of the Record cannot bar the right to recover for the items of loss and damage set out in Section 5 of the petition, since the said contract is wholly null and void and without any force or effect whatsoever. For the purposes of this action the parties thereto are in exactly the same situation as though the contract had never been executed. It is alleged in the petition:

> "That said contract was entirely unilateral and was without any consideration whatever, granted by the Director General to and for the use of the plaintiff, and that all the pretended rights, privileges, and conveniences supposed to be granted by the Director General to the plaintiff, were then the rights, privileges, and conveniences of the plaintiff granted to

it by law. That the plaintiff gained nothing by the execution and acceptance of this contract, and by it lost no rights whatsoever."

The two days' free time or reclaim allowance privilege which is the pretended consideration granted to the plaintiff was already the privilege and advantage of the plaintiff by law and could constitute no consideration between the parties. The additional expressed consideration "such other consideration as may be accorded to it by the Director General," did not obligate or bind the Director General to do or cause to be done anything whatsoever and obviously cannot form the basis or consideration for a valid and operative contract. The Director General gave nothing according to the allegations of the petition, and appears on the face of the contract.

The instrument set out on page 5 of the Record as Exhibit A is *nudum pactum* and cannot operate to bar plaintiff from the recovery to which it is entitled under the law.

VIII.

An Unfounded Position.

The claim of the defendants that no recovery can be had because of the contract is entirely unfounded. There is no language of the contract which would authorize such a construction. Any such general language if taken separate and distinct from everything else would be open to construction by competent evidence, which evidence the Court denied the plaintiff when it was offered according to law. In view of the situation and intent of the parties and the facts

and circumstances existing at the time the said contract was executed this contract cannot be given the construction demanded by the defendants except in open defiance to all rules of law and to the apparent provisions of the contract themselves.

The position that the contract applies to any time before September 10, 1919, is untenable. Its provisions in any event could be prospective only and apply solely from and after the date of execution, and not in any way or to any extent to the control period during which the claims sued upon arose.

It cannot be contended that this contract bars the plaintiff's recovery for the items in this suit in view of the allegations in the petition that the contract was made and demanded wholly without any power or authority so to do and neither created nor intended to create any consideration for the use and benefit of the plaintiff; therefore, to apply it as a receipt in full or as a general waiver of the claims for losses, damages and compensation set out in the petition, is not only unfounded but absurd. The position, therefore, that this contract drawn as it was and for the purposes stated, without authority and without consideration, is a bar to the plaintiff's said right of recovery is not only unfounded and absurd, but is nothing less than untrustworthy. It is as illegal as it is unconscionable. We are not suing for an equitable right, but we are suing for a right guaranteed by the Constitution and based upon the Federal Control Act which was in itself not only legal, but most equitable. How the defendants could settle similar claims of the trunk lines and of the rest of the short lines and then deny a similar settlement to the number of short lines who signed

similar contracts, is a question which must be decided by the defendants themselves. Some reason must be given for this discrimination. The Court below rendered no reason and the defendants have indicated no reason excepting such as is conveyed by a misapplied construction of the general language of the contract. When this language is construed in the light of the circumstances and the situation of the parties, and it is apparent that the contract was made without power or authority so to do and is wholly without consideration, the position is rendered untenable.

IX.

No Legal Waiver.

When the contract is fairly considered it will be found that there is no legal waiver contained in its provisions applying to the four items set out in the claim of the plaintiff.

The law upon this question is well stated by the Supreme Court of the United States in the case of *Bennecke vs. Connecticut Mutual Life Insurance Co.*, 105 U. S. 355; 26 L., 990, as follows:

> "A waiver of a stipulation in an agreement must, to be effectual, not only be made intentionally, but with knowledge of the circumstances. This is the rule not only where there is a direct and precise agreement to waive the stipulation, but also where it is sought to deduce a waiver from the conduct of the party."

This definition has been approved so many times that it would be useless even to cite the cases where such approval has been made. A waiver is generally defined as "an inten-

tional relinquishment of a known right." 28 Am. & Eng. Enc. of Law, 527; 40 Cyc., 252.

The allegations of the petition deny that there was any intention on the part of the plaintiff to waive any of its known rights, and allege that no waiver of such rights was ever made, and these allegations again are admitted by the demurrer and are in nowise in conflict with the language of the contract. Under this rule of law and under the allegations of the petition there is no ground for the claim that any waiver of any right to the recovery of any loss or compensation for the period from January 1 to July 1, 1918, was ever made, and for this reason the demurrer should be overruled.

X.

The Contract of September 10, 1919, is Void on its Face.

The contract set out as Exhibit A of the petition cannot bar the plaintiff's right to recover for the items in suit, since it is absolutely null and void on its face. The said contract shows upon its face that the plaintiff was released from Federal control on June 30, 1918. The contract further shows upon its face that it was executed on September 10, 1919, 15 months after the said relinquishment. The contract therefore shows that the Director General, getting all of his power from the Federal Control Act had exercised all of that power in regard to that railroad and had released the same, which relinquishment had been accepted and acted upon by the plaintiff railroad company on or by July 1, 1918. Therefore the Director General had no authority whatever to make any kind of contract of the nature of the one in suit. The only thing that the Director Gen-

eral had legal power to do after the said date of relinquishment or July 1, 1918, was to settle any claims that may have arisen under the law during the period of control, and as he has refused to settle, he has no authority to act or even contract. The Director General today has as much power towards any or all roads taken under Federal control as he had over the plaintiff road when this contract was executed.

XI.

Construction of War Statutes.

The Act of Congress authorizing the President to take control and possession of the railroads was a war measure which was followed by the Federal Control Act applying retroactively to settlement of all claims on behalf of the railroads beginning on January 1, 1918. This Court has recently had occasion to construe such statutes passed for the same general purposes and in the case of *Houston Coal Co. vs. The United States,* 262 U. S. 361, Mr. Justice McReynolds says:

> "The Lever Act was passed in view of the constitutional provision inhibiting the taking of private property for public use without just compensation. It vested the President with extraordinary powers over the property of individuals which might be exercised through an agent at any place within the confines of the Union with many consequent hardships. As heretofore pointed out, *United States v. Pfitsch,* 256 U. S. 547, by deliberate purpose the different sections of the Act provide varying remedies for owners—some in the district courts and some in the Court of Claims.
>
> "It reasonably may be assumed that Congress in-

> tended the remedy provided by each section should be adequate fairly to meet the exigencies consequent upon contemplated action thereunder and thus afford complete protection to the rights of owners. Considering this purpose and the attending circumstances, we think, Section 10 should be so construed as to give the district courts jurisdiction of those controversies which arise directly out of requisitions authorized by that Section."

It has been heretofore fully discussed that this contract does not cover or apply to any of the items set out in the petition of the plaintiff. It has also been shown that no payment has been made for the loss described in those items and no compensation was given to the plaintiff for the first six months of the Federal Control period. The contract was entirely unilateral, and the petition specifically denies that any consideration whatsoever was given or intended to be given covering the waiver set out in the said contract, or authorized such waiver to be extended to the items set out in the petition of the plaintiff. The provisions of this contract were prospective and applied solely from and after the date of execution, and were not to apply in anywise to the period of control from January 1 to July 1, 1918, and said contract is absolutely void when attempted to be applied to the items of loss and compensation set out in the petition. No consideration was paid by the Director General for the items so set out, and none was ever received by the plaintiff, and no such construction was ever intended to be applied by the Director General or by the plaintiff.

Under the law, then, as quoted above, and under the facts admitted to be true, the contract does not cover the items

in suit, nor does it prevent the plaintiff from recovering thereon.

For these reasons the judgment of the Court of Claims in sustaining the demurrer and dismissing the petition should be reversed.

Respectfully submitted,

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